IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.1240 OF 2005.

WITH

CIVIL APPLICATION NO.1919 OF 2005.

Hindalco Industries Ltd. : Appellants.

versus

Mumbai Municipal Corporation : Respondent.

Mr.E.P.Bharuch with Mr.F.Sayyed i/by Manilal Kher Ambalal & co. for the appellant.

Mr.J.J.Xavier for the respondent/BMC

CORAM : D.G.DESHPANDE,J.

DATED : 27th September 2005.

ORAL ORDER

1. Heard the advocates for the appellant and respondent. Appellant is the original plaintiff, who had filed a suit challenging the notice under section 351 of the B.M.C. Act. The said notice is dated 30.10.1996. It was alleged that there was unauthorised construction on the terrace constructed with Ghass-sliding and M.T. Roof

admeasuring 18’-0" X 11’-0" & 37’-0" X 11’-0" & 8’-10" X 5’-0" having ht. 7’-0" X 8’-0". This is the description of the unauthorised work. The suit of the plaintiff came to be dismissed. When the matter had appeared before me earlier, I had asked the counsel for the appellant to produce the photographs. Today three photographs are produced. They are taken on record and marked by me under signature X-1, X-2 and X-3. They should be treated as part of the order.

2. It is the case of the plaintiff that whatever seen in the photographs is a weather shed. It is there in existence since last 18 years. In the other adjoining building similar shed is there and no action is taken against them. The counsel for the plaintiff also contended that there are no walls covering this so called shed, therefore, it cannot be considered as extension of FSI or increasing the area.

3. My attention was drawn by the learned counsel for the appellant to the findings of the trial court on Issue Nos. 2 to 5. What is referred to in there as the case of the plaintiff

is, unauthorised sheet on the set back terrace. The photographs now shown to me are self explanatory about the nature of construction. By no stretch of imagination, the structure can be called as putting unauthorised sheet on the set back terrace. It is a posh construction. Glass covering from all the directions is there though at some places there is no glass. Apart from this, according to the plaintiff, the structure is there from 1982, there is no evidence with the plaintiff to show that they sought permission of the BMC for erecting the same. I do not find any substance in the submission that as there is no wall, the structure cannot be construed as a room. It is well enclosed and exclusively used portion of the terrace. The fact that the similar structures are there in existence and no action is taken is also no ground to justify the claim and contention of the plaintiff. All these aspects have been rightly considered and rejected by the trial court. No other submission was made. No interference is called for. Hence the appeal is dismissed along with civil application. Application for stay is rejected when the matter is dismissed at admission stage.

[D.G.DESHPANDE,J]